

## **REMARKS**

### **The Amendments**

The specification is replaced to render moot the objection thereto. Claims 1 to 29, and 46-48 have been canceled and replaced by new claims 51 to 81. The claims are written to put them in a form more customary to U.S. practice and to replace the originally presented formulas which contained typographical errors. The formulas have been corrected to correctly match the variables with the variable definitions because mismatching occurred in translation from the German priority document DE10040380. Support for new claim 82 can be found in original claim 6, for example. Support for new claim 83 can be found in original claim 7, for example. Support for new claim 84 can be found in original claim 31, for example. Support for new claim 86 can be found in original claim 1, for example. The amendments do not narrow the scope of the claims and/or were not made for reasons related to patentability. The amendments should not be interpreted as an acquiescence to any objection or rejection made in this application. The subject matter of claims 30-45 and 49 to 50 is canceled and will be pursued in a divisional application.

### **The Rejection under 35 U.S.C. §112, second paragraph**

The rejection of claims 1-50 under 35 U.S.C. §112, second paragraph, is believed to be rendered moot by the above amendments.

### **The Rejection under 35 U.S.C. §101**

The rejection of claims 1-50 under 35 U.S.C. §101 is believed to be rendered moot by the above amendments.

### **The Rejection under 35 U.S.C. §103**

The rejection of claims 1-11 and 45-48 over Platzek WO 97/26017 (corresponding to US 6,468,502) and the rejection of claims 1-7, 12-29 and 45-48 over Platzek WO99/01161 (corresponding to US 6,019,595) are respectfully traversed.

At columns 2-3 of WO 97/26017, Platzek teaches that the complexes may be used to image various tissues and that the complexes are well suited for imaging the vascular system. At columns 3-4 of WO 99/01161, Platzek teaches that the complexes are well suited for imaging the vascular system since they disperse therein after administration. Both Platzek references teach that tissues are viewed indirectly by viewing vascularization or blood flow and finding areas, which have an absence of blood flow. (See, e.g., col. 4 lines 21-38 of '959 and col. 2 lines 45-58 of '502)

Neither reference teaches or suggests a method where plaque or necrotic tissue is viewed directly i.e., "visualized", thereby allowing different types of tissue to be viewed. Nor do the references teach or suggest a method whereby necrosis and tumors are viewed independently from one another. (See, e.g., page 6, lines 19 to 26 of the specification, discussing the distinction of these references)

Thus, the Platzek references do not teach a method of imaging in a manner so as to render the claimed invention obvious under 35 U.S.C §103. Withdrawal of the rejection on this basis is respectfully requested.

### **The Objection to the Disclosure**

The statement of incorporation by reference of documents made in the specification at page 10 is objected to. As evidenced by the citation set forth in the Office Action, the incorporation by reference of a foreign application or publication is improper only when such

is used to incorporate essential material; see also M.P.E.P. §608.01(p). Applicant has pointed to no essential material from the incorporated documents which is necessary to support the instant application, in fact on page 10 of applicants specification it is pointed out that these are known compounds. Further, the PTO has not set forth what essential material is being improperly incorporated herein. If the PTO will point out the essential material from the incorporated documents which is needed to support the instant application, applicants will have the essential material translated and bodily incorporated into the specification in accordance with the In re Hawkins line of cases cited in the Office Action. However, it is respectfully submitted that no such essential material is derived from these incorporated documents and thus bodily incorporation is unnecessary. However, as can be seen in the marked up version of the specification, the subject matter of the claims as presented in the German priority document has been introduced directly into the body of the specification. No new matter is presented.

The objection to the disclosure is believed to be rendered moot by the above amendments. The photographs are removed from the disclosure and placed in new figures 1-18. A brief description of the drawings has been introduced into the specification to indicate what they show.

#### **Claim to Priority**

A certified copy of applicants' priority document is provided herewith.

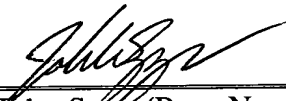
#### **Allowable Subject Matter**

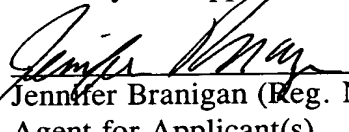
The indication the claims 30-45 and 49-50 are free from the prior art is respectfully acknowledged. These claims will be re-filed in a divisional application.

It is believed that the objections and prior art rejections are overcome and the application is in condition for allowance.

Notice of the allowability of the application is requested. However, the Examiner is kindly invited to contact the undersigned to discuss any unresolved matters.

Respectfully submitted,

  
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